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Comments

WHAT EFFECT HAS PROOF OF MATERNITY

Recent scientific discoveries have introduced reliable methods of proving maternal descent. When children are born in hospitals, each infant's footprints are taken and all birthmarks and defects are noted, in addition to an identification wrist or ankle band. The use of fingerprints and footprints is no longer in an experimental stage of scientific investigation, but has been legally accepted as proof of identity. In this way a child is able to conclusively prove that he is "identically the same person as the child whom the mother brought forth."¹

It is now timely to determine of what value this proof of maternal descent will be to an illegitimate child who has not been acknowledged, even informally, by his mother. Suppose that when C, an illegitimate child, was just a few weeks old, his mother placed him in an orphanage or some similar private institution. Being from a prominent and wealthy family, the mother did not wish it to be known that she had borne an illegitimate child; so, although she paid to have C kept in the institution, she never openly acknowledged him in any manner whatsoever. The name of the mother and child was kept in confidential files, and the hospital where the child was born had records of the birth consisting of date, name, et cetera. Several years later the mother died and C asks to be recognized as the natural child of deceased upon proving his maternal descent by the aforesaid files and hospital records. Should the court hold that this proof of maternity elevated C to the status of a natural child and as such allow him to inherit; or would this proof have no effect on C's status, in which case he would be simply an illegitimate child with his rights confined to alimony?² The main question is whether proof of maternity is a good substitute for acknowledgment so as to enable the child to inherit from the mother as a natural child. Before this question can be answered categorically it is necessary to look into the background and discuss certain problems that have arisen in this connection.

1. Art. 212, La. Civil Code of 1870.

2. Art. 920, La. Civil Code of 1870.

Illegitimate Child—Method of Acknowledgment

"The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in presence of two witnesses, by the father and mother or either of them, whenever it shall not have been made in the registering of the birth or baptism of such child."³

This article presents a question of great importance and one which has been the subject of much controversy: whether the acknowledgment of an illegitimate child, to enable the child to inherit, can be made in any other mode than as provided for by Article 203.

Some of the older cases held that the formal acknowledgment required by Article 203 is that of the father and that acknowledgment by the mother could be shown by any legal evidence.⁴ However, this distinction has not survived and the later cases have held that the same rules regarding the modes of acknowledgment apply to both father and mother.⁵ With this in mind, the next step is to determine whether or not Article 203 is exclusive.

There are two divergent lines of jurisprudence on this point—one holding that Article 203 is positive and mandatory as to the methods of acknowledgment;⁶ the other holding that said article does not stand alone but that the Code expressly permits other modes of proof, both of paternal and maternal descent.⁷ It seems unnecessary to state here the reasons for allowing informal acknowledgment, or the reasons for requiring that it be formal in one of the methods provided by Article 203, because

3. Art. 203, La. Civil Code of 1870.

4. *Jobert v. Pitot*, 4 La. Ann. 305 (1849); *Succession of Hebert*, 33 La. Ann. 1099 (1881); *Austin v. Mattle*, 4 Orl. App. 148 (La. 1907).

5. *Hart v. Hoss and Elder*, 28 La. Ann. 90 (1874); *Bourriaque v. Charles*, 107 La. 217, 31 So. 757 (1902). *Succession of Corsey*, 171 La. 663, 131 So. 841 (1930).

6. *Succession of Lacost*, 142 La. 673, 77 So. 497 (1917) (mother was attempting to inherit the estate of her illegitimate child); *Perkins v. Brownell-Drews Lbr. Co.*, 147 La. 337, 84 So. 894 (1920) (parents attempting to inherit from illegitimate child); *Minor v. Young*, 149 La. 583, 89 So. 757 (1921) (children attempting to inherit from mother).

7. *Lange v. Richoux*, 6 La. 560 (1834); *Jobert v. Pitot*, 4 La. Ann. 305 (1849); *Succession of Fortier*, 51 La. Ann. 1562, 1585 (1899); *Bourriaque v. Charles*, 107 La. 217, 31 So. 757 (1902); *Succession of Gravier*, 125 La. 733, 51 So. 704 (1910); *Briggs v. McLaughlin*, 134 La. 133, 63 So. 851 (1913); *Taylor v. Allen*, 151 La. 82, 91 So. 635 (1922); *Murdock v. Potter*, 155 La. 145, 99 So. 18 (1923); *Succession of Falls*, 2 La. App. 759 (1925); *Succession of Corsey*, 171 La. 663, 131 So. 841 (1930); *Succession of Jones*, 185 La. 377, 169 So. 440 (1936); *Succession of Tyson*, 186 La. 516, 172 So. 772 (1937); *Fennell v. United States*, 67 F.(2d) 768 (C.C.A. 5th, 1933).

both sides of the question have been treated exhaustively in the cases of *Minor v. Young*⁸ and *Taylor v. Allen*,⁹ the latter holding that informal acknowledgment is sufficient to change the status of an illegitimate child to that of an acknowledged natural child. Several years later in *Succession of Corsey*¹⁰ the court held that an illegitimate child was entitled to inherit from her father simply upon proof of her paternity. Therefore, there is no question as to the effect of proof of paternal descent, and a child making such proof would, at the same time, be proving informal acknowledgment. Such child would then be classified as a natural child and Article 920, pertaining to unacknowledgable illegitimates who can receive nothing more than alimony, would not apply to him. Instead, his rights to inherit would be determined by Article 919. But proof of maternal descent, unlike proof of paternity, does not include acknowledgment of any kind. It might even be said that proof of maternity is much more difficult to make than proof of informal acknowledgment. Article 212 reads:

"Illegitimate children of every description may make proof of their maternal descent, provided the mother be not a married woman.

"But the child who will make such proof shall be bound to show that he is identically the same person as the child whom the mother brought forth."

How would one go about this task? The expression generally found is that illegitimate children may prove their maternal descent by any legal or competent evidence.¹¹ Such proof involves proof of the accouchment and the bringing forth of the child and then proof of the identity of the claimant with the child so brought forth.¹² In the case of *Lange v. Richoux*¹³ it was said that under the Eleventh law of Toro, which was in force before the Code of 1808, it was considered by the ablest commentators that proof of birth was equivalent to acknowledgment on the part of

8. 149 La. 583, 89 So. 757 (1921). See dissenting opinion.

9. 151 La. 82, 91 So. 635 (1922). See dissenting opinion. Also see Comment (1931) 6 Tulane L. Rev. 120, and Oppenheim, Acknowledgment and Legitimation in Louisiana—Louisiana Act 50 of 1944 (1945) 19 Tulane L. Rev. 325.

10. 171 La. 663, 131 So. 841 (1930).

11. *Jobert v. Pitot*, 4 La. Ann. 305 (1849); *Austin v. Mattie*, 4 Orl. App. 148 (La. 1907); *Succession of Davis*, 126 La. 178, 52 So. 266 (1910); *Fennell v. U. S.*, 67 F.(2d) 768 (1933).

12. *Succession of Berfuse*, 34 La. Ann. 599 (1882).

13. 6 La. 560 (1834).

the mother. Also that under the Code Napoleon it was the consensus of opinion among the commentators that proof of maternity is a forced acknowledgment and has the same effect as the voluntary one in authentic form. Before this rule can be upheld under the present law, Article 918 presents a point that must be disposed of. This article provides that "natural children are called to the legal succession of their natural mother, when they have been duly acknowledged by her..." It is true that in the case postulated there was no public recognition of the child C, but "duly acknowledged" does not necessarily mean by notarial act or in the birth or baptismal certificate.¹⁴ Methods of acknowledgment include proof of paternal and maternal descent.¹⁵

A thorough search of the cases dealing with proof of maternal descent fails to reveal any wherein an illegitimate child was attempting to inherit from his mother simply by proving his maternity. There are expressions on this point, but they must be considered as dicta only because the factual situation is different. Upon evidence that plaintiff's mother and her deceased sister were daughters of the same woman, the sisters were classified as natural children and plaintiffs were allowed to inherit from deceased.¹⁶ In a later case,¹⁷ proof of maternal descent was offered on behalf of the mother to entitle her to inherit the estate of her illegitimate child. It was held that the mother was not an heir at law since the Code¹⁸ does not provide for proof of maternal descent by or on behalf of the mother. In *Succession of Gravier*¹⁹

14. Comment (1931) 6 Tulane L. Rev. 120.

15. *Lange v. Richoux*, 6 La. 560 (1834); *Succession of Davis*, 126 La. 178, 52 So. 266 (1910); *Briggs v. McLaughlin*, 134 La. 133, 63 So. 851 (1913); *Taylor v. Allen*, 151 La. 82, 91 So. 635 (1922); *Oppenheim*, supra note 9, at 328: "the rule which is becoming well established is that in order for the child to inherit from the parents informal acknowledgment is all that is necessary.... proof of paternal and maternal filiation have practically been substituted for the formal acknowledgment."

16. *Lange v. Richoux*, 6 La. 560, 570 (1834): "the Code expressly permits other modes of proof both of paternal and maternal descent without any restriction as to the purpose for which it may be allowed."

17. *Succession of Lacost*, 142 La. 673, 77 So. 497 (1917). There was also informal acknowledgment in this case, and the decision was based on the fact that there must be formal acknowledgment according to Article 203 before a parent could inherit from his illegitimate child. *Provosty, J.*, concurs on the ground that while the child may prove acknowledgment in a mode other than either of those expressly provided for by the Code, the mother may not. In accord: *Perkins v. Brownell-Drews Lbr. Co.*, 147 La. 337, 84 So. 894 (1920); *Wells v. White-Grandin Lbr. Co., Inc.*, 13 La. App. 696, 129 So. 171 (1930).

18. La. Civil Code of 1870.

19. 125 La. 733, 51 So. 704 (1910), where it was held that brothers and sisters cannot inherit from a deceased sister simply on proof of maternal descent. Acknowledgment is a prerequisite. The brothers and sisters cannot

the court flatly stated that an illegitimate child could not inherit from his mother by proving only that she was his mother; she must recognize him in one of the ways pointed out by law. However, that was not the issue involved in the case, so the statement can be accorded very little weight. Several times the court has made definite statements indicating that proof of maternal descent alone can be substituted for acknowledgment by the mother and that such proof would be sufficient to elevate an illegitimate child to the status of a natural child, thereby having the same effect as acknowledgment and allowing the child to inherit.²⁰

In 1933, the federal court had occasion to pass upon the point under discussion and, after reading the codal provisions and reviewing the jurisprudence of Louisiana, came to the conclusion that an illegitimate child, at least as respects his right to inherit from his mother, may have what is called a "forced acknowledgment." This occurs when the child proves the actual relationship under Article 212 by any appropriate evidence.²¹

Who May Make Proof of Maternal Descent

"Illegitimate children of every description may make proof of their maternal descent, provided the mother be not a married woman."²²

This article presents a point that could be used as an argument against the proposition that proof of maternity should be equivalent to informal acknowledgment of the mother. It might be said that even adulterous and incestuous children would be

be in a better position than the father and mother and since the latter could not inherit from their children because of the absence of acknowledgment, then the children inherit no right from their parents to the deceased sister's estate.

20. *Lange v. Richoux*, 6 La. 560 (1834); *Jobert v. Pitot*, 4 La. Ann. 305 (1849); *Succession of Davis*, 126 La. 178, 52 So. 266 (1910); *Briggs v. McLaughlin*, 134 La. 133, 63 So. 851 (1913): "In *Succession of Davis*, the cases of *Lange v. Richoux* and *Jobert v. Pitot* are cited and quoted as authority for the proposition, the soundness of which is not questioned, that natural children may prove their maternal descent by any legal evidence, and that such proof is equivalent to acknowledgment."

21. *Fennell v. United States*, 67 F.(2d) 768 (1933). No mention was made of any acknowledgment whatsoever. It was simply conceded that the mother was unmarried and that plaintiff and deceased were her identical children. Plaintiff was allowed to inherit from his deceased brother upon such proof. The court said that by this "forced acknowledgment" they proved themselves, as respects the mother, to be natural brothers and sisters within Article 923.

22. Art. 212, La. Civil Code of 1870.

allowed to inherit from the mother under such circumstances, but there are two answers to the argument: First, illegitimate children can prove their maternal descent only in case the mother is not a married woman; and second, if it were possible to prove that the father was a married man or that the child was an incestuous illegitimate, the prohibition against such children inheriting is found in Article 920.

The only remaining argument left is to the effect that the Code article²³ provides that only natural children, duly acknowledged by their mother, can inherit from her. As stated before, only a few cases have required this acknowledgment to be formal as provided in Article 203, and in those cases that have accepted informal acknowledgment as being sufficient the holding is based on the fact that the Code does provide for other modes of acknowledgment, namely, proof of paternity and maternal descent. This is, undoubtedly, an acceptance of the idea that proof of maternal descent is *one* of the modes of informal acknowledgment, and it therefore seems logical that such proof would have the same effect as does the public recognition of an illegitimate child by his natural mother, which is simply another mode of informal acknowledgment.

It could hardly be said that this result would overthrow the social policy behind the problem, because the parents of the illegitimate child certainly should be, and supposedly are, the ones to suffer. The acceptance of proof of maternal descent as one of the modes of informal acknowledgment does not allow any greater benefits to the natural mother because the Code does not provide for such proof on *her* behalf. The modern trend of the cases and legislative action²⁴ is to allow all possible rights to this unfortunate class of children. The right of proving maternal descent belongs only to those children who could have been legally acknowledged, therefore it is not introducing a new class entitled to inherit from the mother, but is only giving the same class an additional method of proving acknowledgment. The fact that a mother has not been decent enough to hold her child out to the public as her own should not be held against the child and serve to deprive him of an inheritance that is rightfully his.

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23. Art. 918, La. Civil Code of 1870.

24. La. Act 50 of 1944.